



# EJ Quarterly

An Environmental Justice Bulletin

## IN THIS ISSUE:

State and Tribal Grants  
Program...1

Title VI Case  
Dismissal...3

Oregon's Lead Based  
Paint Program.....4

Grant Availability ..4

NEJAC Subcommittee  
Membership Lists.....5

The South Africa  
Report .....7

## State and Tribal Environmental Justice Grants Program Fiscal Year 1998 Grantees

The State and Tribal Environmental Justice (STEJ) Grants Program, sponsored by the U.S. Environmental Protection Agency, Office of Environmental Justice, is intended to help States and Tribes effectively comply with Title VI of the Civil Rights Act of 1964 and provide for environmental justice in the development and implementation of their environmental programs. For fiscal year 1998, EPA awarded five grants, at \$100,000 each, to (4) States and (1) Tribe. These are listed on page 2.

The specific objective of the STEJ Grants Programs is to accomplish the following environmental justice goals and objectives: 1) enhance the state or tribal government's effectiveness in complying with Title VI of the Civil Rights Act of 1964, 2) reduce or prevent disproportionately high and adverse human health or environmental effects on low-

income communities and minority communities, 3) integrate environmental justice goals into a state's or tribe's policies, programs and activities, 4) provide financial and technical resources to develop an enabling infrastructure at the state/local community level and tribal/tribal community level, 5) set up model programs to address enforcement and compliance issues in affected EJ communities, 6) integrate measurable EJ goals within the annual Performance Partnership Agreements (PPAs) and Memorandums of Understandings (MOUs) between a state and EPA, or integrate measurable EJ goals within the Tribal Environmental Agreements (TEAs), and 7) improve public participation in the decision-making processes (e.g. permitting processes, development of regulations and policies).

## UPCOMING NEJAC MEETING IN BATON ROUGE, LA

The next meeting of the full National Environmental Justice Advisory Council (NEJAC) will be held December 7-10, 1998 at the Baton Rouge Hilton, 5500 Hilton Avenue, Baton Rouge, Louisiana. The NEJAC was established to ensure that EPA receives the viewpoints of affected stakeholders on issues related to environmental justice. The NEJAC consists of 25 members representing environmental justice groups; industry; and state, local and tribal governments and both government and non-government organizations. It has six subcommittees that focus on issues related to enforcement, health and research, indigenous peoples, international issues, public participation and accountability, and waste and facility siting. In addition to the 25 NEJAC members, each of who sits on a subcommittee, 39 individuals

serve as members of various subcommittees. See agenda on p.6

**For  
NEJAC  
Membership  
List and  
Meeting  
Agenda**

**See  
pages 5 & 6**

**Barry Hill selected as  
the Director of EPA's  
Office of Environmental  
Justice**

**see page 3**

## State and Tribal Environmental Justice Grants Program Fiscal Year 1998 Grantees

### OEJ HOME PAGE

is available on  
the Internet  
accessible  
through the EPA  
homepage at  
<http://es.epa.gov/oeca>

#### United States Environmental Protection Agency:

Carol M. Browner  
*Administrator*

#### Enforcement and Compliance Assurance:

Steven A. Herman  
*Assistant Administrator*

#### Office of Environmental Justice:

Barry Hill  
*Director*

#### Enforcement Capacity and Outreach:

Pete Rosenberg  
*Acting Director*

Robert Banks  
*Editor, EJ Quarterly*

United States EPA  
401 M St., SW (2201A)  
Washington, DC 20460  
(202) 564-2572

#### STEJ - 01 Vermont Agency of Natural Resources, Department of Environmental Conservation

This project will work to achieve both compliance with environmental standards and remediation of adverse environmental conditions at mobile home parks while meeting the affordable housing needs of thousands of low-income Vermonters. The two specific goals of the project are: 1) obtain compliance and reduce or prevent disproportionate adverse environmental and health effects on mobile home park residents, and 2) develop enabling infrastructure at the state and local level with technical and legal resources available to assist mobile home park residents. This project seeks to address the unique environmental and public health concerns which impact mobile home park residences. Five state agencies have formed a mobile home park compliance group to share information, expertise, and authority to develop and implement solutions for mobile home park problems that previously seemed unsolvable from an individual agency perspective.

#### STEJ - 03 New Jersey Department of Environmental Protection

The purpose of this project is to allow the New Jersey Department of Environmental Protection (DEP) to establish and incorporate an "Environmental Justice (EJ) Screening Process" for evaluating EJ issues of affected communities with respect to Air, Water, and/or Federal Hazardous Waste facility permits. Based upon the results from the EJ Screening Process, the DEP would establish an Environmental Equity Community Partnership (EECP) Program in those minority and/or low-income communities that may be experiencing a cumulative environmental burden.

#### STEJ - 09 State of Tennessee Environmental Policy Office

This project will include the development of a strategic plan to ensure environmental justice the Department's programs. The State will create a strategic plan with significant community involvement that will guide all environmental justice activities of the Tennessee Department of Environment and Conservation (TDEC) and serve as a state and national model. The grantee will address environmental justice through three major components: 1) achieving an integrated system of meaningful community involvement and participation through networks, such as Tennessee's regional Minority Health Coalitions

and other organizations, 2) integrating environmental justice strategies with a major ongoing initiative to re-engineer the Department's environmental regulatory programs, and 3) Developing and strengthening partnerships with other state and federal agencies.

#### STEJ - 14 Texas Natural Resource Conservation Commission(TNRCC)

This project seeks to further TNRCC's compliance with Title VI of the Civil Rights Act of 1964, through the creation and guidance of stakeholder advisory panel. The project goals were developed with input from various communities that have filed Title VI complaints against the TNRCC or which have raised issues of environmental justice with the agency in order to determine the best course of action to reduce the possibility for future complaints. The advisory panel, made up of the partnering community representatives from Beaumont, Corpus Christi, Houston, and Wichita Falls--along with the TNRCC Chairman or his appointee, Public Interest Counsel, Office of Legal Services--Supplemental Environmental Projects, and a representative from a Regional Field Office, will help develop model programs to be piloted in their respective areas to address enforcement and compliance concerns. Furthermore, the panel will provide vital input to enhance the agency's environmental equity efforts.

#### STEJ - 26 Kalispel Tribe of Indians

The Kalispel Tribe proposes to develop and implement an ISO 14001 conforming Environmental Management System (EMS) that integrates EJ goals with environmental performance objectives for the Kalispel reservation. The Kalispel Tribe developed the proposal with the support and advice of grassroots organizations, the Director of the Washington Department of Ecology and his staff, Pend Oreille County, and the Coeur D'Alene, Colville and Spokane Tribes. The ISO 14001 standard, establishes an internationally accepted framework for EMSs which can serve as a sustainable program that: 1) allow meaningful involvement of all members of the Tribe in the development of goals for an environmental program, 2) prevents impacts from being disproportionately borne by subgroups within the Tribe, 3) goes above and beyond compliance with environmental laws, 4) reduces pollution and pro-actively prevents pollution, and 5) ensures fair treatment.

## ***Supreme Court Dismisses as Moot an EJ Case Filed under Title VI of the Civil Rights Act over State Permit***

On August 17, 1998, the Supreme Court dismissed as moot Seif v. Chester Residents Concerned For Quality Living, 1998 WL 477242, an important environmental justice case filed in federal district court under Title VI of the Civil Rights Act.

The dismissal came at the request of the plaintiffs, a group of residents in Chester, Pennsylvania. They had sued the State's environmental agency over a permit for a solid waste facility in the city of Chester, which is a predominantly African-American community. In their lawsuit, the plaintiffs alleged that the permit violated EPA's Title VI regulations because it would have racially discriminatory human health, environmental, and other effects on members of their community, which already is overburdened by polluting facilities. Unexpectedly, they asked the Supreme Court to end the case after learning that the State agency recently had revoked the permit for the proposed facility at the request of the permittee.

The issue before the Court was whether the plaintiffs had the right to bring their lawsuit under Title VI without alleging intentional discrimination. Title VI prohibits recipients of federal funds from discriminating on the basis of race, color, or national origin in their programs and activities. While the statute itself bans intentional discrimination only, it allows federal agencies to adopt implementing regulations that also ban unintentional discriminatory effects. It is well settled that Title VI creates an implied right for a private party to sue a recipient for intentional discrimination. However, the Supreme Court has not squarely addressed the question of whether a private party may sue to enforce an agency's Title VI regulation that prohibits discriminatory effects—a proposition that is widely accepted among the federal courts of appeals.

As a recipient of EPA grant funds, the State's environmental agency is subject to the requirements of Title VI and EPA's implementing regulations. In lieu of filing an administrative complaint with EPA's Office of Civil Rights, the plaintiffs brought their complaint in federal district court alleging that the permit at issue violated EPA's Title VI regulation that bans discriminatory effects. The district court granted the State agency's motion to dismiss the complaint. It ruled that,

unlike intentional discrimination claims under Title VI itself, there is no private right of action to enforce EPA's regulation. The district court's dismissal of the case was reversed on appeal by the Third Circuit Court of Appeals.

As a result, the State agency petitioned the Supreme Court to review the case, which the Court accepted for review in early June.

In their last filing, the plaintiffs requested that the Court dismiss the case as moot and suspend the briefing schedule while it considered the mootness question. They also argued that, if the Court dismissed the case, it should not vacate the appeals court's decision because the case became moot after that decision but before the Court had accepted the case for review. One day before the State agency's opening brief was due, the Court suspended the briefing schedule. Less than two weeks later, it summarily dismissed the case as moot and remanded it to the appeals court with instructions for its dismissal. In doing so, the Court followed its usual practice of vacating the judgment below to preserve the rights of the parties in future litigation.

### ***Barry Hill Selected as Director, OEJ***

On November 16, 1998, Assistant Administrator Steven A. Herman announced that Barry Hill had been appointed as the Director of EPA's Office of Environmental Justice. Mr. Herman stated that Mr. Hill comes to EPA with impressive qualifications and background, including experience as a governmental manager at the Department of the Interior, as a teacher of environmental justice at law institutions, a member of the Executive Committee of the Board of Directors of the Environmental Law Institute and as counsel with an international law firm. Mr. Herman also stated that as demonstrated by his successful work experiences with diverse groups, Mr. Hill will bring to EPA interpersonal and leadership skills as well as sensitivity to environmental issues.

### ***New Region X Office Director***

Joyce Kelly has been selected as the director of Region 10's new Office of Civil Rights and Environmental Justice.

She will be responsible for taking on the challenge of shaping and leading this new office, which will bring together Region 10's equal opportunity, civil rights, environmental justice and Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) and Title VI programs. As the Office Director, Ms. Kelly will be a member of the Executive Team.

Ms. Kelly has a wealth of experience in both civil rights and environmental justice and has demonstrated her passion and commitment to these principles throughout her career. Most recently, she has served the Region as program manager for environmental justice.

## EPA AUTHORIZES OREGON'S LEAD-BASED PAINT PROGRAM

On September 3, 1998, the U.S. Environmental Protection Agency (EPA) Region 10 authorized Oregon to administer and enforce a Lead-based Paint Activities Program. Oregon is the first state in Region 10 and one of the few states in the country to receive approval for a state Lead Program.

On March 31, 1998, Oregon applied to EPA for authorization to administer and enforce a State Lead-based Paint Program. The Lead Program will be administered by the Oregon Health Division. This agency will share responsibilities for certification and enforcement with the Oregon Construction Contractors Board.

Under the Toxic Substances Control Act (TSCA), Congress mandated that EPA develop and implement a nationwide lead-based paint hazard reduction program. State and Tribal governments, however, may apply to EPA for authorization to administer their own programs in lieu of this Federal Program. To become authorized by EPA, State and Tribal programs must be as protective as the federal program and adequately enforced.

The program is designed to protect families from exposure to lead in paint, dust, and soil by protecting them from the hazards of improperly conducted lead-based paint activities. The lead program ensures that contractors are qualified through training and certification to inspect, assess or remove lead-based paint, dust or soil are well qualified to conduct these activities. Training and certification is required to ensure the proficiency of contractors who conduct lead-based paint inspection, risk assessment and abatement services in residences and day care centers. Trainer accreditation is required to ensure that training programs provide quality instruction in current and effective work practices.

Oregon State Rules for the Certification of Individuals and Firms engaged in Lead-based Paint Activities were promulgated on May 1, 1997. These rules describe the requirements for certification of individuals and firms providing lead-based paint services. According to the rules, no person or firm may perform lead-based paint services in target housing or child occupied facilities without first receiving certification. Lead-based paint services include lead paint inspections and risk assessments, and the design and application of lead paint hazard reduction (abatement) operations. For further information, please contact Barbara Ross at (206) 553-1985.

**The *EJ Quarterly* accepts submittals of articles or other types of information for consideration for publication. If you have information that you feel is appropriate for publication in the *EJ Quarterly*, please contact Robert Banks at (202) 564-2572 or send information too Robert at mail code 2201A, U.S. Environmental Protection Agency, Washington, DC 20460**

## COTTONWOOD FOUNDATION ANNOUNCES GRANT AVAILABILITY

Approximately 25 grants of up to \$1,000 will be awarded in 1999 by Cottonwood Foundation, a small foundation that provides grants to grassroots organizations internationally that combine activities in all of the following four areas: protecting the environment, promoting cultural diversity, empowering people to meet their basic needs, and relying on volunteer efforts.

If you are interested in applying for one of these grants or would like to nominate another group for consideration, please visit the web site at <http://www.pressenter.com/~cottonwd/> for application instructions or contact:

Cottonwood Foundation  
Box 10803  
White Bear Lake, MN 55110 USA  
e-mail: [cottonwood@igc.apc.org](mailto:cottonwood@igc.apc.org)

Completed applications are due on February 12, 1999 for consideration in Spring 1999 or August 12, 1999 for consideration in Fall 1999.

## NEED INFORMATION?

The Office of Enforcement and Compliance Assurance has announced the opening of the Enforcement and Compliance Docket and Information Center located in Room 4033 of the Ariel Rios Building in Washington, DC. The ECDIC provides the public and EPA staff with a central location for retrieving rulemaking docket materials, OECA policy and guidance documents, and other public information that supports the Agency's enforcement and compliance activities..

ECDIC opened in January 1998 and now houses over 600 policy and guidance dockets, 100 publications and several regulatory dockets. Holdings include the Audit Policy Docket, Supplemental Environmental Projects Policy, and the annual Enforcement Accomplishments Report.

ECDIC reflects EPA's recent efforts to provide better public access to Agency records and information. Reading, photocopying, and mail distribution facilities are available. The center is open for business from 8:00 am to 4:00 pm. For more information contact Lee Carothers, (202) 564-2614 or Donna Williams (202) 564-2119. E-mail ([docket.oeca@epamail.epa.gov](mailto:docket.oeca@epamail.epa.gov)), or check out the ECDIC web site at <http://es.epa.gov/oeca/polguid/enfdock.html>.



# NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL MEETING AGENDA

**Baton Rouge Hilton, 5500 Hilton Avenue, Baton Rouge, Louisiana  
December 7-10, 1998**

## **MONDAY, DECEMBER 7**

5:00 p.m. Registration Begins  
6:45 p.m. NEJAC Meeting Convenes for Public Comment Period  
7:00 p.m. Public Comment Period Begins  
9:00 p.m. NEJAC Adjourns for the Evening

## **TUESDAY, DECEMBER 8**

8:00 a.m. COFFEE/REGISTRATION BEGINS  
9:00 a.m. NEJAC Meeting Convenes  
    Welcome and Opening Remarks  
    — Senior Manager, Environmental Protection Agency  
    — Senior Manager, EPA Office of Enforcement and Compliance Assurance (OECA)  
    — Gregg Cooke, Regional Administrator, Region VI  
    — Tom Goldtooth, Acting Chair of NEJAC  
10:00 a.m. Review of the Agenda  
    Discussion with Barry Hill, Director, OEJ  
10:30 a.m. Title VI Workgroup Update  
    Anne Goode, Director, OCR  
11:00 a.m. Report on the Waste Transfer Station  
    Fact Finding Meeting, Brooklyn, NY  
12:00 p.m. Lunch Break  
1:30 p.m. NEJAC Meeting Reconvenes  
    Discussion of new business continued  
    Science Advisory Board Committee Report  
    Dr. Maria Morandi, Univ. of Texas  
2:30 p.m. Report on the White House EJ Listening Sessions, Brad Campbell, Director, CEQ  
3:30 p.m. Discussion of the NEJAC Assessment WorkGroup, Charles Lee, Chair  
5:30 p.m. NEJAC Adjourns for the Evening

## **WEDNESDAY, DECEMBER 9**

8:00 a.m. COFFEE/REGISTRATION  
8:30 a.m. NEJAC Subcommittee Meeting Convenes  
5:00 p.m. NEJAC Subcommittees Adjourn  
6:45 p.m. NEJAC Meeting Reconvenes for Public Comment Period  
    - Remarks from Haywood Turrentine, Chair of NEJAC  
7:00 Public Comment Period Begins  
9:00 NEJAC Adjourns for the Evening

## **THURSDAY, DECEMBER 10**

8:00 a.m. COFFEE/REGISTRATION  
9:00 a.m. NEJAC General Session Reconvenes  
    Acknowledgment of the Air/Water Subcommittee  
    Dana Minerva, Deputy Assistant Administrator,  
    EPA Office of Water  
    Robert Brenner, Acting Deputy Assistant Administrator,  
    EPA Office of Air and Radiation  
10:30 a.m. Business Requiring Executive Council Action  
    — Subcommittees' reports, findings and recommendation  
12:00 p.m. Lunch Break  
1:00 p.m. NEJAC General Session continues  
    - Council resolutions  
3:00p.m. Afternoon Break  
3:15 p.m. Business Requiring Executive Council Action continued  
5:00 p.m.. NEJAC Meeting Adjourns

## South Africa Report

On November 16, NEJAC Chairman Haywood Turrentine submitted to the EPA Administrator, the South Africa Report, which was prepared by the International Subcommittee's Workgroup on South Africa. The report contains recommendations from the community leaders. The recommendations were given to the South Africa Workgroup representatives during their personally financed, ten day, fact finding trip.

The recommendations for consideration and the Executive Summary are printed below.

### EXECUTIVE SUMMARY

Representatives of the South Africa Working Group of the National Environmental Justice Advisory Council's (NEJAC) International Subcommittee visited South Africa in February 1998 during the meeting of the Gore-Mbeki Binational Commission (BNC). The purpose of the visit was to participate in activities associated with the BNC and to meet with communities and environmental justice organizations in an effort to identify possible areas of work and collaboration.

The South Africa Report provides a narrative that includes general observations, summaries of meetings and tours and the recommendations from the community and environmental leaders in South Africa to NEJAC, its International Subcommittee and the Office of International Activity (OIA).

This executive summary presents the recommendations outlined in section seven of the report.

### RECOMMENDATIONS

The following recommendations represent the thinking of the communities we met with in South Africa not the authors of this report. The recommendations are:

- Establish consistent communication between environmental justice networks with a point of contact in South Africa and the U.S.
- Develop an exchange program of information and trainings "community based organization to community based organization"
- Bring U.S. study tour of environmental justice groups working with EPA/NEJAC to South Africa
- Maintain environmental justice observer at Binational Committee (BNC) meetings both from South Africa and from the U.S.
- Link Environmental Justice groups in U.S. with South Africa groups who are addressing similar issues

- Establish link between South African Environmental Justice Network, Grantees of the small grants program (South African Development Initiative for the Environment) and the South Africa Working Group of the International Subcommittee of NEJAC

- Develop a community based technical assistance center in South Africa that houses environmental justice experiences and trainings on various environmental issues

- Invite the participation of the South African Environmental Justice Network Forum in the Environmental Management and Pollution Working Group of the Binational Commission

- Conduct official study tour to South Africa for the South Africa Working Group

- Request U.S. EPA to facilitate the participation of the South Africa Working Group in the Environmental Management and Pollution Working Group of the BNC

#### Specific Recommendations to EPA/OIA

- Leadership Teams/Facilitation Teams/Training Teams from EPA to South Africa should have People of Color Participants

- Integrate community based experience into the Environmental Impact Assessment trainings for South Africa (being provided by EPA/OIA)

- Build networks between the Bush Colleges in South Africa and the historical Black Colleges and Universities in the U.S. (coordinate efforts)

The following represents an immediate and specific request:

- Provide to the Environmental Justice Network Forum in South Africa the following:

- A. Education/training materials
- B. "How to" guides on environmental issues
- C. Instruction on how the environmental justice community developed NEJAC with EPA

The NEJAC is requested to approve and implement the listed recommendations. The Council is also requested to work with the International Subcommittee in developing a plan of action and its concomitant time frame and budget.

For further information on the South Africa Report, contact Marva King, OEJ, (202) 564-2599.



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